

### **REMARKS/ARGUMENTS**

The rejections presented in the Office action dated August 10, 2005 have been considered. Claims 1-21 are pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 1, 2, 4-7, 9, 10, 13, 14, 16, 19, and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,875,119 (hereinafter the '119 reference). The Applicants respectfully traverse the rejection for reasons included in the present response.

Of these rejected claims, Claims 1, 10, 16 and 20 are independent claims. Without acquiescence to characterizations in the Office Action of equivalence between the '119 reference and the claimed features of these independent claims, the Applicant has amended Claims 1, 10, 16 and 20 to facilitate prosecution of the application. Referring to Claim 1 for example, the collecting system includes monitorable components (*e.g.*, processor, memory, peripheral equipment, etc.). In addition to the monitorable components, the collecting system of Claim 1 includes at least one instrument, and a data collector. As set forth in Claim 2, the collecting system includes at least one analyzing module. Due to the doctrine of claim differentiation, the at least one *instrument* and the *data collector* of Claim 1 are different than the at least one *analyzing module* of Claim 2. The Office Action identifies portions of the '119 reference as teaching the instrument and the data collector, but it is respectfully submitted that the cited portion of the '119 reference does not describe the at least one instrument as set forth in Claim 1. More particularly, the Office Action indicates that column 4, lines 7-30 teaches the at least one instrument, and column 4, lines 30-51 teaches the data collector. However, description at column 4, lines 30-51 appears to describe a logic analyzer. The combination of the monitorable component(s), instrument(s) and data collector do not appear to be described in the '119 reference, where at the cited portions a performance monitor and logic analyzer are described.

Claim 1 has been amended to more clearly set forth an aspect of the invention where the one or more instruments are each respectively functionally connected only to one of the

monitorable components of the closed system. In other words, while there may be more than one instrument per monitorable component, each such instrument collects operational information only from a respective one of the monitorable components of the closed system. Therefore, each monitorable component is associated with at least one such instrument to collect its respective operational information. The instrument is then capable of further providing the information to the data collector, and ultimately even to a logic analyzer. The amendments to Claim 1 are fully supported by the Specification, including that which is described in paragraphs 7 and 24 of the present application. Independent Claims 10, 16 and 20 have also been amended in a similar manner, to facilitate prosecution of the application. It is respectfully submitted that for the reasons set forth above, and in view of the clarifying amendments, independent Claims 1, 10, 16 and 20 are in condition for allowance.

Dependent Claims 2, 4-7 and 9 are dependent from independent Claim 1; dependent Claims 13 and 14 are dependent from independent Claim 10; and dependent Claim 19 is dependent from independent Claim 16. These dependent claims also stand rejected under 35 U.S.C. §102(b) as being unpatentable over the '119 reference. While Applicants do not acquiesce with the particular rejections to these dependent claims, including any assertions concerning common knowledge, obvious design choice and/or what may be otherwise well-known in the art, it is believed that these rejections are moot in view of the remarks made in connection with independent Claims 1, 10 and 16. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited references. Therefore, it is respectfully submitted that dependent Claims 2, 4-7, 9, 13, 14 and 19 are also in condition for allowance.

Claims 3, 8, 11, 12, 15, 17, 18, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the '119 reference in view of U.S. Patent No. 6,819,538 (hereinafter '538 reference). To establish a *prima facie* case of obviousness based on a combination of references, three basic criteria must be met, as is set forth in M.P.E.P., §2143. These criteria include that the prior art references must teach or suggest all of the claim limitations.

The Office Action indicates that in the §103 rejection, the ‘119 reference is used as the basis of teaching the subject matter of the independent and intermediary claims from which Claims 3, 8, 11, 12, 15, 17, 18, and 21 are dependent. As set forth above, the Applicants submit that these claims are distinguishable from the ‘119 reference. The Applicants also submit that the ‘538 reference does not describe features of at least the independent claims, and therefore a combination of the ‘119 and ‘538 references do not teach or suggest at least the features set forth in independent Claims 1, 10, 16 and 20. Dependent Claims 3, 8, 11, 12, 15, 17, 18, and 21 include all of the limitations of the base claim and any intervening claims. “If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious.” M.P.E.P. §2143.03;  *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent Claims 3, 8, 11, 12, 15, 17, 18, and 21 are also allowable over the combination of references, for at least the reason that the cited combination of references does not teach or suggest all of the limitations of these claims.

More particularly, it is respectfully submitted that a combination of the ‘119 and ‘538 references fail to at least teach the use of a data collector where instruments are each respectively functionally connected only to one of the monitorable components of the closed system. Further, it is respectfully submitted that features claimed in Claims 3, 8, 11, 12, 15, 17, 18 and 21 do not all relate to adjusting the performance and/or power consumption of the system, yet the only claimed feature identified in the Office Action as being taught by the ‘538 reference relates to adjusting the performance and/or power consumption. Thus, it is respectfully submitted that *prima facie* obviousness is not established for such claims, as it has not been established that the cited combination of references teaches or suggests all the claim limitations. Nonetheless, it is respectfully submitted that these claims are indeed in condition for allowance, as the combination of references fails to at least teach what is set forth in the independent claims as amended. Therefore, dependent Claims 3, 8, 11, 12, 15, 17, 18 and 21 are also in condition for allowance.

The Applicants respectfully submit that the currently pending claims are in condition for allowance. If it would be helpful to the Examiner, the undersigned attorney of

record invites the Examiner to contact him at 952.854.2700 (ext. 11) to discuss any issues related to this case.

Respectfully submitted,

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Date: November 10, 2005

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